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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed

No. 122

EDDIE (BUSTER) PATTON,

Petitioner,

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR PETITIONER

THURGOOD MARSHALL,
New York, New York,
Attorney for Petitioner.

L. J. BROADWAY,
Meridian, Mississippi;
EDWARD R. DUDLEY,
ANDREW WEINBERGER,
FRANKLIN H. WILLIAMS,
New York, New York,
Of Counsel.

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Opinion of Court Below

The opinion has not been reported officially. It is reported in 29 So. (2d) 96 and appears at pages 227-235 of the record. Suggestion of Error (Petition for Rehearing) was overruled by the Supreme Court of Mississippi on the 17th day of March, 1947 (R. 153), without opinion.

Jurisdiction

The date of the judgment in the Circuit Court of Lauderdale County, Mississippi, is March 2, 1946. This judgment was affirmed by the Supreme Court of Mississippi on Feb-

ruary 10, 1947. Suggestion of Error was overruled on March 17, 1947.

Certiorari to review the judgment of the Supreme Court of the State of Mississippi affirming the conviction was granted by this Court on June 23, 1947 (R. 153) upon a petition therefor filed on June 12, 1947, and based upon Section 237(b) of the Judicial Code (28 U. S. C. 344(b)).

Statement of Case

Petitioner, a young ignorant Negro, was indicted on the 18th day of February, 1946, by the grand jury of Lauderdale County, Mississippi, for the alleged murder of one Jim Meadows, a white man fifty-three years of age. His trial in the Circuit Court of Lauderdale County was begun on February 28, 1946, and concluded the same day. He was sentenced on March 2, 1946, to suffer death by electrocution.

Prior to the trial on the merits, petitioner moved to quash the indictment upon the grounds that Negroes in Lauderdale County were systematically excluded from service on the jury solely because of their race or color (R. 1). That motion was denied (R. 2). During the trial, objection was made by petitioner to the introduction into evidence of statements and confessions obtained from petitioner by officers through the use of force, threats and intimidation (R. 142). The court overruled the objections (R. 142). An appeal was taken to the Supreme Court of Mississippi. After affirmation by the court (R. 152), Suggestion of Error was filed (R. 144) and overruled (R. 153).

The material facts concerning the exclusion of Negroes from jury service and the method of obtaining the confession are discussed in the argument herein.

Errors Relied Upon

I

The Supreme Court of Mississippi erred in denying petitioner the equal protection of the laws and due process of law guaranteed by the Fourteenth Amendment by affirming the conviction of a Negro by a jury of white persons upon an indictment found and returned by a grand jury of white persons, from both of which said juries all qualified Negroes have for a long period of years been systematically excluded solely on account of race or color pursuant to established practices. . .

A. PETITIONER WAS INDICTED AND CONVICTED BY GRAND AND PETIT JURIES IN THE CIRCUIT COURT OF LAUDERDALE COUNTY IN WHICH COURT AT THE TIME OF THIS TRIAL AND FOR A LONG PERIOD OF YEARS PRIOR THERETO NEGROES HAVE BEEN SYSTEMATICALLY EXCLUDED FROM JURY SERVICE SOLELY BECAUSE OF RACE OR COLOR WITHIN THE MEANING OF THE DECISIONS OF THIS COURT.

(1) The Record in this Case Clearly Establishes the Systematic Exclusion of Qualified Negroes from Jury Service in Lauderdale County, Mississippi, Solely Because of Race and Color.

(2) In Affirming the Conviction of Petitioner Herein The Supreme Court of Mississippi Erred in Refusing to Consider Evidence of Systematic Exclusion of Negroes from Jury Service in that County Prior to the Year of the Instant Case.

II

The conviction of petitioner upon confessions and statements extorted by force, duress and intimidation obtained by officers and agents of the State of Mississippi while acting in their official capacity is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

I

The Supreme Court of Mississippi erred in denying petitioner the equal protection of the laws and due process of law guaranteed by the Fourteenth Amendment by affirming the conviction of a Negro by a jury of white persons upon an indictment found and returned by a grand jury of white persons, from both of which said juries all qualified Negroes have for a long period of years been systematically excluded solely on account of race or color pursuant to established practices.

It is well settled that whenever by an action of a State all persons of a particular race are excluded solely because of their race or color from service as jurors in a criminal prosecution of a person of that race the equal protection of the laws is denied to him, and he is deprived of due process of law contrary to the Fourteenth Amendment of the United States Constitution. This principle applies whether the action is by virtue of a statute [1] or by the action of adminis-

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[1] *Bush* v. *Kentucky*, 107 U. S. 110, 122; *Strauder* v. *West Virginia*, 100 U. S. 303, 309.

trative officers[2] and whether the exclusion is from service on petit juries[3] or grand juries.[4]

The Mississippi Supreme Court, while admitting that this principle is well settled,[5] refused to apply it to the facts of this case, and by reason of such failure denied petitioner his constitutional rights.

A. PETITIONER WAS INDICTED AND CONVICTED BY GRAND AND PETIT JURIES IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI, IN WHICH COURT AT THE TIME OF THIS TRIAL AND FOR A LONG PERIOD OF YEARS PRIOR THERETO NEGROES HAVE BEEN SYSTEMATICALLY EXCLUDED FROM JURY SERVICE SOLELY BECAUSE OF RACE OR COLOR WITHIN THE MEANING OF THE DECISIONS OF THIS COURT.

While the Mississippi statutes relative to juries and jurors[6] do not in terms provide for the exclusion of Negroes, the evidence discloses an exclusion and resultant discrimination by administrative officers as uniform and effective as if required by statute.

(1) The Record in This Case Clearly Establishes the Systematic Exclusion of Qualified Negroes from Jury Service in Lauderdale County Solely Because of Race and Color.

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[2] *Rogers* v. *Alabama*, 192 U. S. 226, 229; *Carter* v. *Texas*, 177 U. S. 442.

[3] *Norris* v. *Alabama*, 294 U. S. 587; *Strauder* v. *West Virginia*, *supra*.

[4] *Carter* v. *Texas*, *supra*, at page 444; *Patterson* v. *Alabama*, 294 U. S. 600.

[5] "It has long been settled in this country that an intentional and arbitrarily systematic exclusion of Negroes from grand and petit jury lists solely because of their race and color denies the equal protection of the laws to a Negro charged with crime, so that at this time no parade of the authorities is necessary on that point" (R. 146).

[6] Mississippi Code (1942), sections 1762-1772.

The Mississippi Supreme Court in affirming the judgment of the trial court held that the evidence was sufficient to sustain the action of the trial judge in overruling petitioner's motion to quash the indictment and his objection to the special venire on the grounds that Negroes were excluded from such juries. In a recent case involving this identical question this Court in a unanimous opinion by Mr. Justice Black recognized the responsibility of this Court to make an independent appraisal of the evidence as it relates to the petitioner's constitutional rights.[7]

In an opinion by Mr. Chief Justice Hughes, after stating the general principle set out above, it was pointed out that:

> "The question is of the application of this established principle to the facts disclosed by the record. That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights.[8]

Such an independent appraisal of the evidence herein will reveal that qualified Negroes were systematically excluded from jury service in Lauderdale County, Mississippi, because of race or color within the meaning of prior decisions of this Court. The testimony of fourteen witnesses, not sympathetic to either petitioner or members of his race, reveals that Negroes were systematically

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[7] *Smith* v. *Texas*, 311 U. S. 128 at p. 130.

[8] *Norris* v. *Alabama*, *supra*, at p. 589.

excluded from jury service in that county solely because of race or color.

B. M. Stephens, a former member of the Board of Supervisors of the county from 1924 through 1931, and Sheriff of the county from 1931 through 1935, testified that as supervisor it was his duty to help fill the jury boxes and during these years he had never known a Negro to "be on the jury, coming out of the jury box or going into it" and that during that time it was a matter of common knowledge that there were some Negroes qualified for jury service in the county (R. 3-6).

Mrs. Addie Rivers, a deputy circuit clerk for four (4) years and a clerical worker in the office of the Circuit Clerk for two (2) years prior thereto, testified that to her knowledge no Negro had served, been called on to serve or drawn on a jury, grand or petit, during that time; that in 1945, the Clerk did list eight (8) Negro qualified jurors for service in the local Federal District Court (R. 8). She further testified that no Negro was called or served on the grand jury for the term at which petitioner was indicted (R. 6-12).

C. C. Ferrill, Circuit Clerk, with over thirteen (13) years service in the Chancery Clerk's office, testified that he never knew of a Negro serving on the jury at any term of the Circuit Court or being drawn or summoned for such service. He further testified that it was his judgment that there were about twenty-five (25) qualified Negro jurors in Beat One, city of Meridian, which city is in Lauderdale County (R. 12-23).

Howard Cameron, Chancery Clerk since January, 1936, and deputy for such office since March, 1933, testified that in his judgment, there were eight thousand to ten thousand qualified electors in the county and that there were several hundred Negro registrants on the books of Lauderdale County (R. 25). He further testified that to his knowledge since 1933 there had never been any Negro empanelled for

nor any to serve on the grand or petit jury in the criminal courts of the county, and that there were no Negroes on the grand jury that indicted petitioner (R. 23-31).

W. Y. Brame, Sheriff since 1944 and tax assessor for the county for twelve years prior thereto, testified that there were no Negroes on the jury summoned for the February, 1946 term of court; that he knew of only one Negro having been summoned for jury duty during his connection with the county government, which individual did not report, and that he had found from time to time some forty (40) to fifty (50) Negro registrants on the books (R. 31-38).

Tom Johnson, member of the Board of Supervisors, testified that during his twenty-five (25) to thirty (30) years' service in such county, he had never listed any Negro jurors and had never tried to determine whether there were any qualified for such in his jurisdiction (R. 42-48). He testified: "Q. Mr. Johnson, in making up your jury list since you have been supervisor have you made any effort at any time to determine whether in the registration books for your beat there were registered Negroes with a view of listing them for jury service? A. I have never had that in mind, because we did not have any darkies of consequence in the beat, have not yet. I have enough troubles without going into all those details."

J. A. Riddell, Judge, Lauderdale County Court, and a practicing attorney in the county since 1916, and a resident in the county since 1911, testified that since 1916 no Negro had served upon the grand jury in the county and that no Negro had been called or qualified for such service during those years; that in his judgment there were about one hundred (100) Negro qualified electors (R. 48-54).

George Beeman, Superintendent of Education of the county for ten (10) years, testified that during those years no Negro had been impanelled or called to the jury box for the grand jury (R. 54-57).

Donovan Ready, a CPA, testified that a check of the number of qualified electors of the county in the years 1941 and 1942 showed that there were at least thirty (30) to sixty (60) Negro qualified electors, and that there might have been others whom he did not know (R. 57-60).

E. C. Gunn, a member of the Board of Supervisors for about six (6) years, testified that though there were four (4) or five (5) Negroes on the registration books of his District, he had not listed a Negro for jury duty during his term in office, and that to his knowledge not a single Negro had been called to the jury box with the view of being qualified for grand jury service, nor had any served on the grand jury during his term of office (R. 60-63).

L. D. Walker, member of the Board of Supervisors for seventeen (17) years, testified that to his knowledge no Negro had served on the grand jury or had been called to qualify for such during his period of service. He stated further that he did not know of an instance in the history of the county where a colored person had served upon the grand jury (R. 63-69).

O. L. King, member of the Board of Supervisors for seven years, stated that he did not know of having ever seen a Negro impanelled or called to the jury box during his period of service (R. 69-74).

William Wright, member of the Board of Supervisors for about nine (9) or ten (10) months, testified that no Negroes served on the February, 1946 grand jury, and that he knew that for fifteen (15) years no Negroes had served on the grand jury in that county, though there were some qualified Negro electors on the books (R. 74-80).

Frank Kennedy, former member of the Board of Supervisors from 1928 to 1932, testified that during his term of office he did not list the name of any Negro on the jury list though there were one or two that he knew of who were in every respect qualified, and that there might have been

more so qualified that he did not know. He stated further that to his knowledge no Negro had ever served on the grand jury (R. 80-84).

There was testimony to show that the ratio of Negroes to whites in the population of Lauderdale County was approximately sixty-five (65) to thirty-five (35) (R. 85) or fifty-fifty (R. 83).

In the face of this testimony, the Supreme Court of the State of Mississippi, in its opinion, concluded that the trial judge was justified "in finding that there were not over fifty qualified Negro electors in the county, of whom . . . one-half were women, which would leave twenty-five qualified Negro male electors. He was justified also in accepting the testimony . . . that at least half the Negro electors . . . were teachers or ministers or physicians, or otherwise exempt from jury service. Of the twenty-five qualified Negro male electors, there would be left . . . twelve or thirteen available male Negro electors . . . or about one-fourth of one per cent Negro jurors,—four hundred to one" (R. 148).

Continuing to apply the rule of an alleged percentage as to the special venire the Court held: "For the reasons already heretofore stated there was only a chance of 1 in 400 that a Negro would appear on such a venire and as this venire was of one hundred jurors, the sheriff, had he brought in a Negro, would have had to discriminate against white jurors, not against Negroes,—he could not be expected to bring in one-fourth of one Negro" (R. 149).

The opinion of the Supreme Court of Mississippi ignores most of the material testimony on the jury question and based its decision upon testimony of three of the fourteen witnesses called to the effect that there were an estimated eleven thousand qualified electors in the county and that there were less than one hundred, or as one witness testified

fifty qualified Negro electors in the county[9] half of whom were estimated to be ineligible because of sex or occupation (R. 147-149).

In examining Mrs. Addie Rivers, a Deputy Clerk, as to the contents of two poll tax books representing two divisions of one precinct there were found the names of at least eleven Negroes, which names indicated that they were men in every respect qualified to be listed on the jury rolls (R. 38-41). Howard Cameron, Chancery Clerk testified that:

> "Q. Mr. Cameron, could you and would you give the court the benefit of your very best judgment as to the number of names of members of the Negro race that now appear upon the registration books of Lauderdale County?

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[9] Code 1942, Section 1762, 1766, 1768, 1772.

Section 1762 provides who are competent jurors in the following language: "Every male citizen not under the age of twenty-one years, who is a qualified elector and able to read and write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror (both grand and petit); but no person who is or has been within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. . . ."

Section 1766, Code of Mississippi, 1942:

"The board of supervisors at the April meeting in each year or at a subsequent meeting is not done at the April meeting, shall select and make a list of persons to service as jurors in the circuit court for the twelve months beginning more than thirty days afterwards, and as a guide in making the list they shall use the registration book of voters, and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and shall take them as nearly as they conveniently can, from the several supervisor's districts in proportion to the number of qualified persons in each. . . . The clerk of the circuit court shall put the names from each supervisor's district in a separate box or compartment, kept for the purpose, which shall be locked and kept closed and sealed, except when juries are drawn, when the names shall be drawn from each box in regular order until a sufficient number is drawn. The board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. If the jury box shall at any time be so exhausted of names as that a jury cannnot be drawn as provided by law, then the board of

"A. Frankly I have never given it any consideration, but I am under the opinion that there are *several hundred of them*" (R. 25).

A County Court Judge, J. A. Riddell, testified that in his judgment there were about one hundred Negro qualified electors in the county (R. 75-82) while, Donovan Ready, another witness, found as a result of a personal check of the rolls *in 1941 and 1942* from thirty to sixty Negro qualified electors *whom he personally knew.*

An independent examination of the evidence in this case will reveal:

(1) That for at least thirty years prior to the trial of petitioner, no Negro had been drawn, summoned or served on a Grand or Petit Jury in Lauderdale County.

(2) That at various times during these years there had been from twenty-five to several hundred qualified Negro electors who could have been properly listed, drawn or summoned for such service, and that the existence of such qualified Negro electors was common knowledge throughout the county.

(3) That the Clerk of the Circuit Court, at the request of the Federal Jury Commissioner, had, with little effort,

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supervisors may at any regular meeting make a new list of jurors in the manner herein provided. In order that the board of supervisors may properly perform the duties required of it by this section, it is hereby made the duty of the circuit clerk of the county and the registrar of the voters (also the clerk) to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several supervisor's districts in the county."

Section 1768, Mississippi Code 1942, provides that the list of names thus selected and made up be certified to the clerk of the circuit court, and carefully filed and preserved by him as a record of his office.

Section 1772 of the same code provides how grand and petit juries are drawn for terms of court.

furnished him with a list of at least eight such Negroes who were in every respect so qualified.

(4) That no Negroes served on the Grand Jury which found the indictment in the instant case, and that no Negroes served on the Petit Jury which convicted the petitioner.

The testimony establishing these facts was sufficient in itself to make out a *prima facie* case of the denial of the equal protection of the laws to petitioner. In *Norris* v. *Alabama, supra,* where similar evidence was introduced, the Court said:

> "We are of the opinion that the evidence required a different result from that reached in the state court. We think that the evidence that for a generation or longer no Negro had been called for service on any jury in Jackson County, that there were Negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age but that no names of Negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate consideration of the qualifications of Negroes, established the discrimination which the Constitution forbids." [10]

Once this *prima facie* case had been established by petitioner, it then became incumbent upon the State to prove by competent testimony that Negroes were not unconstitutionally excluded from jury service. This burden the State failed to sustain.[11]

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[10] 294 U. S. 587, 596.

[11] "We think that this evidence failed to rebut the strong prima facie case which defendant had made. That showing as to the long-continued exclusion of Negroes from jury service, and as to the many Negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general asser-

2) In Affirming the Conviction of Petitioner Herein The Supreme Court of Mississippi Erred in Refusing to Consider Evidence of Systematic Exclusion of Negroes from Jury Service in That County Prior to the Year of the Instant Case.

The Supreme Court of Mississippi refused to consider the evidence of the systematic exclusion of Negroes from jury service over a long period of years prior to the year immediately preceding the trial:

> "We have not gone back of the year of and immediately preceding this trial, as to the jury lists, for the evident reason that in that respect we are concerned with that which bears real relation to the instant case and therefore with the present and that which was in the immediate parts,—not with what may have happened in remote days. And in following out the mathematical calculations per capita among the nonexempt qualified persons, we are not to be considered as having resorted to it as an exclusion method for the solution of the question with which we have above dealt. Upon such a broad issue other considerations are to have their proper bearing. We have proceeded as we have here, because that method is sufficient for the present case" (R. 149).

Prior decisions of this Court have clearly established the principle that testimony of the exclusion of Negroes from jury service in former years is competent evidence of unconstitutional discrimination in the selection of jurors and is entitled to great weight.[12]

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tions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of Negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement."—*Norris* v. *Alabama, supra,* at p. 598.

[12] *Norris* v. *Alabama, supra; Neal* v. *Delaware,* 103 U. S. 370. See also: 82 L. Ed. 1070, 1072.

Under the laws of the State of Mississippi, in addition to requiring as a prerequisite for being eligible for jury service, that one be "a qualified elector,"[13] it is also required that the registration book of voters shall be used "as a guide in making the list" of potential jurors. The code further provides that the list of prospective jurors shall be certified to the Clerk of the Circuit Court, filed and preserved by him.[14]

Testimony presented before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946-79th Congress at hearings held in Jackson, Mississippi on the 2d, 3d, 4th and 5th days of December, 1946, showed a state-wide condition of intimidation by State officers of large blocks of Negroes who attempted to register and to vote in a recent primary held in that State.[15]

In 1946, Mississippi passed a law exempting veterans from payment of poll taxes under certain conditions.[16] A great movement of Negro veterans took place all over the State to register to vote. There were 66,972 discharged Negro veterans in Mississippi and practically 100% of them could read and write.[17]

The Supreme Court of Mississippi in a futile effort to distinguish this case from *Smith* v. *Texas, supra,* pointed out that in the *Smith* case ten percent of the qualified jurors were Negroes and that in the instant case the ratio was less than one percent. In doing this the Court not only ignored the evidence of witnesses that there were "hun-

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[13] Mississippi Code, 1942, Section 1762.

[14] Mississippi Code, 1942, Section 1768.

[15] See Minutes of Special Committee to investigate Senatorial Campaign Expenditures, 1946, Senate of the United States, 79th Congress; In the Matter of the Investigation of the Mississippi Democratic Primary Campaign of Senator Theodore G. Bilbo, Senator, State of Mississippi, pp. 22, 98, 137, 146-147, 267, 134, 139, 619, 608, 365, 395, 731, 754, 813.

[16] General Laws of Mississippi—1946, Chap. 441, App. April 10, 1946.

[17] See Minutes, footnote 15, pages 491-493.

dreds" of Negroes qualified for jury service but also ignored the reasons for there being only "hundreds" of Negro registered voters. The State of Mississippi acting through its officers not only excluded Negroes from jury service by refusing to call qualified Negroes, but also effectively excluded Negroes by preventing them from qualifying under the laws of Mississippi by means of force, intimidation and duress in violation of the United States Constitution.

Accordingly, many hundreds of Negroes whose names should legitimately appear upon the registration rolls in the custody of the Circuit Clerk of Lauderdale County, which rolls by law were to be used as a guide in selecting and making a list of potential jurors[18] were unlawfully denied the opportunity to have their names entered thereon.

There can be no clearer indication of the atmosphere in which the juries of Lauderdale County are selected and in which petitioner was tried than the testimony of Tom Johnson, a member of the Board of Supervisors off and on since 1904 and in continuous service since 1928, that:

> "Q. Mr. Johnson, in making up your jury list since you have been supervisor have you made any effort at any time to determine whether in the registration books for your beat there were registered Negroes with a view of listing them for jury service?
>
> A. I have never had that in mind, because we did not have any darkies of consequence in the beat, have not yet. I have enough troubles without going into all those details" (R. 46).

Mr. Johnson, on the other hand, testified:

> "Q. As a general thing, the vast majority of whites meet those requirements of good intelligence, sound judgment and fair character?
>
> A. Not all.

[18] Mississippi Code, 1942, Section 1766.

Q. I would hate to say all. The vast majority of them do though, don't they?

A. The vast majority do; yes, sir.

Q. Therefore you list whites insofar as that qualification is concerned generally, don't pay so much attention to it, is concerned generally, don't pay so much attention to it, as you do regard them of good intelligence, sound judgment and fair character?

A. There are some exceptions. In other words, suppose a man is in trouble all the time, been convicted of selling whiskey, any other violations of the law, I don't consider him worthy of a juryman.

Q. When you have that knowledge certainly you don't, and you are right, but where you don't have knowledge personally and should not have any, you go on the assumption he will meet that qualification?

A. Yes, sir; as far as I know I try to put him in there if (fol. 74) he is qualified in that request" (R. 48).

The extent of this discrimination becomes more apparent when we compare the fact that there are 10,435 white persons over the age of twenty-one in Lauderdale County and 5,548 Negroes over the age of twenty-one in that county and witness after witness testified that no Negro had ever been called for jury service in that county.[18a]

This type of law enforcement is in direct opposition to our Constitution as interpreted by this Court and is in flagrant disregard of the principle as set forth in a recent decision.

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently

[18a] 16th United States Population Census—1940.

such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."[19]

II

The conviction of petitioner upon confessions and statements extorted by force, duress and intimidation obtained by officers and agents of the State of Mississippi while acting in their official capacity is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

From the testimony of a deputy sheriff in the instant case, it was ascertained that petitioner, an ignorant Negro youth, was taken to the local jail and placed in the office at approximately 1 p. m. on the afternoon of his arrest (R. 137). He was kept in this secluded office and was denied any opportunity to contact an attorney, relatives or friends. He was forced to remain so confined in the presence of numerous policemen and other law enforcement officials whose powers in his mind undoubtedly were greatly magnified, until about 8 or 8:30 that night. During all of this time he was denied food and drink. He was being continually subjected to grilling, questioning and cross-examination by approximately seven or nine white officers. He was made

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[19] *Thiel* v. *Southern P. Co.*, 328 U. S. 217, at p. 220.

to strip off his clothing and lie on the floor naked (R. 158). There was some testimony which would lead to an inference that he was actually beaten (R. 158). While on the floor, he was continually told that he was lying; that he might as well tell the truth and that they were going to get it out of him anyhow (R. 136-179).

As a result of this tortuous inquisition, petitioner allegedly confessed to having stolen and concealed certain articles belonging to the deceased, and made other statements tending to connect him with the crime. He was then chained and manacled and carried to various remote places where he allegedly pointed out the hiding place of these articles and identified them.

After a brief and cursory preliminary hearing as to the voluntary nature of parts of these confessions, at which time only one witness testified, the court allowed numerous references to be made to them over the objection of petitioner (R. 180, 181, 185, 186, 187, 204, 217, 218, 219).

These rulings were error and the admission of such testimony was in violation of constitutional guarantees of equal protection and due process of the law.[20]

The State Supreme Court in its opinion attempted to justify the admission of various portions of the appellant's alleged confession on the ground that they "had definite relations to the articles mentioned and to the pointing out of the place where appellant admitted he had concealed them . . . ." However, as stated by this Court:

> "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent

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[20] *Bram* v. *U. S.*, 168 U. S. 532; *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S. 547.

fundamental *unfairness in the use of evidence whether true or false.* The criteria for decision of that question may differ from those appertaining to the state's rule as to the admissibility of a confession. As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice . . . . Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession" (italics ours).[21]

The conviction of petitioner herein should be reversed. It was based solely upon a confession secured under circumstances constituting duress and intimidation, a situation which has been many times the basis for this Court's reversal of such unlawful convictions.[22]

Conclusion

Petitioner was indicted and tried by juries from which members of his race were systematically excluded simply because they were Negroes. This not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.

The record clearly shows further that petitioner's conviction was based upon portions of a confession extorted from him through the use of force, duress, violence and intimidation.

The court's refusal to quash the indictment herein, and its refusal to quash the special venire and the admission of

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[21] *Lisenba* v. *California, supra,* at 236.

[22] See footnote 20, *supra.*

portions of an unlawfully obtained confession were violative of the Constitution and laws of the United States.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of the State of Mississippi should be reversed.

THURGOOD MARSHALL,
20 West 40 Street,
New York 18, New York,
Attorney for Petitioner.

L. J. BROADWAY,
P. O. Box 969,
2nd Floor Rosenbaum Building,
Meridian, Mississippi;
ANDREW WEINBERGER,
67 West 44 Street,
New York 18, New York;
EDWARD R. DUDLEY,
FRANKLIN H. WILLIAMS,
20 West 40th Street,
New York 18, New York,
Of Counsel.